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IDEIA 2004 Memorandum II

To: Superintendents and Directors of Schools
Supervisors of Special Education
Department of Education Field Service Directors
Division of Special Education Staff
Division of Special Education Administrative Law Judges
Division of Special Education Mediators

From:  Joseph Fisher, Assistant Commissioner

Subject: Comparison of State Regulations and IDEIA 2004

Date: June 27, 2005

The purpose of this memorandum is to provide additional guidance in implementing the provisions of IDEIA 2004 pending the promulgation of federal and state regulations. To the extent that IDEIA 2004 contains substantive or procedural language different from state regulations on a particular topic, it supersedes state regulations.

Accompanying this memorandum is a chart which delineates topics wherein our regulations differ from and are superseded by IDEIA 2004. The language displayed in *italics/bold* print indicates the procedure which LEAs should follow regarding each particular topic pending the promulgation of federal and state regulations, or further guidance from the division of special education.

	TOPIC	STATE REGULATION	IDEIA 2004
1.	Assistive technology device and related services	No specific exclusions	<i>Does not include a medical device that is surgically implanted or the replacement of such device</i>
2.	Complaint process for private school officials	None	<i>May file with DOE alleging failure of LEA to communicate</i>
3.	Due process early resolution session	None	<i>Optional by agreement within 15 days of filing</i>
4.	Hearing officer considerations / burden of proof for children considered dangerous to themselves and others	Determines whether LEA has demonstrated by substantial evidence that maintaining the current placement is substantially likely to result in injury to the child or to others; considers appropriateness of current placement; considers whether LEA made efforts to minimize risk of harm in current placement; determines that proposed alternative setting is appropriate	<i>Hearing officer may order a change in placement; may return to placement from which removed or order change to an appropriate interim alternative educational setting for not more than 45 school days if maintaining the current placement is substantially likely to result in injury to the child or to others</i>
5.	Homeless children	Not included in child find	<i>Included in child find</i>
6.	IEP Short term objectives	<i>Required</i>	Required in exception circumstances
7.	Informed consent to placement	<i>40 school days</i>	60 calendar days
8.	Mandatory medication	No prohibition	<i>Prohibited, but LEA may share observations with parent</i>
9.	Manifestation determination standard	Appropriate IEP, placement, services, behavior strategies; disability did not impair ability to understand impact and consequences of behavior; and disability did not impair ability to control behavior	<i>Conduct was caused by, or had direct and substantial relationship to disability or the conduct was direct result of LEA's failure to implement IEP</i>
10.	Manifestation review team	IEP team and other qualified personnel	<i>LEA representative, parent and relevant members of the IEP team</i>
11.	Placement during appeals of disciplinary decisions	Last agreed upon placement	<i>Interim alternative setting</i>
12.	Placement for children found dangerous to themselves and/or others	Not more than 45 calendar days	<i>Not more than 45 school days in interim alternative placement</i>
13.	Placement for drugs, weapons, serious bodily injury	Not more than 45 calendar days	<i>Not more than 45 school days in interim alternative placement</i>

	TOPIC	STATE REGULATION	IDEIA 2004
14.	Refusal or failure to consent to initial provision of special ed and related services after initial evaluation	LEA must invoke procedural safeguards	<i>No duty to invoke procedural safeguards</i>
15	Services to unilaterally placed private school children	Responsibility of LEA where child resides	<i>Responsibility of LEA where private school is located</i>
16.	Special circumstance offense of serious bodily injury (in addition to drugs and weapons)	None	<i>Injury involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of bodily member, organ or mental faculty</i>
17.	Summary of Performance and recommendations on meeting post secondary goals	None	<i>Must be provided to all children who either graduate with a regular diploma or exceed eligibility due to age</i>
18.	Transfer students	Temporary placement not to exceed thirty (30) days	<i>Transfer in the same school year, enrolls in new LEA, has IEP, new LEA shall provide services comparable to previous IEP, consult with parents until LEA adopts previous IEP or evaluates (if necessary), and develops, adopts, and implements new IEP</i>
19.	Transition services in IEP	<i>Beginning at 14 years</i>	Beginning at 16 years
20.	Transmittal of records requirement	None	<i>Reasonable steps to send and request</i>

NOTE: This chart delineates topics wherein our state regulations differ from and are superseded by IDEIA 2004. The language displayed in *italics/bold* print indicates the procedure which LEAs should follow regarding each particular topic pending the promulgation of federal and state regulations, or further guidance from the division of special education.

